

1 FAYER GIPSON LLP
2 A Limited Liability Partnership
3 GREGORY A. FAYER (State Bar No. 232303)
4 gfayer@fayergipson.com
5 ELLIOT B. GIPSON (State Bar No. 234020)
6 egipson@fayergipson.com
7 2029 Century Park East, Suite 3535
8 Los Angeles, California 90067
9 Telephone: (310) 557-3558
10 Facsimile: (310) 557-3589

11
12 Attorneys for Plaintiff
13 CYBERSitter, LLC d/b/a Solid Oak Software

14
15
16 UNITED STATES DISTRICT COURT

17
18 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

19
20 CYBERSitter, LLC, a California limited
21 liability company, d/b/a Solid Oak Software,

22 Plaintiff,

23 v.
24 The People's Republic of China, a foreign
25 state; Zhengzhou Jinhui Computer System
Engineering Ltd., a Chinese corporation;
Beijing Dazheng Human Language
Technology Academy Ltd., a Chinese
corporation; Sony Corporation, a Japanese
corporation; Lenovo Group Limited, a
Chinese corporation; Toshiba Corporation, a
Japanese corporation; ACER Incorporated, a
Taiwanese corporation; ASUSTeK
Computer Inc., a Taiwanese corporation;
BenQ Corporation, a Taiwanese
corporation; Haier Group Corporation, a
Chinese corporation; DOES 1-10, inclusive,

26 Defendants.
27
28

29 CASE NO. CV 10-00038 JST (SH)

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
589
590
591
592
593
594
595
596
597
598
599
599
600
601
602
603
604
605
606
607
608
609
6010
6011
6012
6013
6014
6015
6016
6017
6018
6019
6020
6021
6022
6023
6024
6025
6026
6027
6028
6029
6030
6031
6032
6033
6034
6035
6036
6037
6038
6039
60310
60311
60312
60313
60314
60315
60316
60317
60318
60319
60320
60321
60322
60323
60324
60325
60326
60327
60328
60329
60330
60331
60332
60333
60334
60335
60336
60337
60338
60339
60340
60341
60342
60343
60344
60345
60346
60347
60348
60349
60350
60351
60352
60353
60354
60355
60356
60357
60358
60359
60360
60361
60362
60363
60364
60365
60366
60367
60368
60369
60370
60371
60372
60373
60374
60375
60376
60377
60378
60379
60380
60381
60382
60383
60384
60385
60386
60387
60388
60389
60390
60391
60392
60393
60394
60395
60396
60397
60398
60399
603100
603101
603102
603103
603104
603105
603106
603107
603108
603109
603110
603111
603112
603113
603114
603115
603116
603117
603118
603119
603120
603121
603122
603123
603124
603125
603126
603127
603128
603129
603130
603131
603132
603133
603134
603135
603136
603137
603138
603139
603140
603141
603142
603143
603144
603145
603146
603147
603148
603149
603150
603151
603152
603153
603154
603155
603156
603157
603158
603159
603160
603161
603162
603163
603164
603165
603166
603167
603168
603169
603170
603171
603172
603173
603174
603175
603176
603177
603178
603179
603180
603181
603182
603183
603184
603185
603186
603187
603188
603189
603190
603191
603192
603193
603194
603195
603196
603197
603198
603199
603200
603201
603202
603203
603204
603205
603206
603207
603208
603209
603210
603211
603212
603213
603214
603215
603216
603217
603218
603219
603220
603221
603222
603223
603224
603225
603226
603227
603228
603229
603230
603231
603232
603233
603234
603235
603236
603237
603238
603239
603240
603241
603242
603243
603244
603245
603246
603247
603248
603249
603250
603251
603252
603253
603254
603255
603256
603257
603258
603259
603260
603261
603262
603263
603264
603265
603266
603267
603268
603269
603270
603271
603272
603273
603274
603275
603276
603277
603278
603279
603280
603281
603282
603283
603284
603285
603286
603287
603288
603289
603290
603291
603292
603293
603294
603295
603296
603297
603298
603299
603300
603301
603302
603303
603304
603305
603306
603307
603308
603309
603310
603311
603312
603313
603314
603315
603316
603317
603318
603319
603320
603321
603322
603323
603324
603325
603326
603327
603328
603329
603330
603331
603332
603333
603334
603335
603336
603337
603338
603339
6033310
6033311
6033312
6033313
6033314
6033315
6033316
6033317
6033318
6033319
6033320
6033321
6033322
6033323
6033324
6033325
6033326
6033327
6033328
6033329
6033330
6033331
6033332
6033333
6033334
6033335
6033336
6033337
6033338
6033339
60333310
60333311
60333312
60333313
60333314
60333315
60333316
60333317
60333318
60333319
60333320
60333321
60333322
60333323
60333324
60333325
60333326
60333327
60333328
60333329
60333330
60333331
60333332
60333333
60333334
60333335
60333336
60333337
60333338
60333339
603333310
603333311
603333312
603333313
603333314
603333315
603333316
603333317
603333318
603333319
603333320
603333321
603333322
603333323
603333324
603333325
603333326
603333327
603333328
603333329
603333330
603333331
603333332
603333333
603333334
603333335
603333336
603333337
603333338
603333339
6033333310
6033333311
6033333312
6033333313
6033333314
6033333315
6033333316
6033333317
6033333318
6033333319
6033333320
6033333321
6033333322
6033333323
6033333324
6033333325
6033333326
6033333327
6033333328
6033333329
6033333330
6033333331
6033333332
6033333333
6033333334
6033333335
6033333336
6033333337
6033333338
6033333339
60333333310
60333333311
60333333312
60333333313
60333333314
60333333315
60333333316
60333333317
60333333318
60333333319
60333333320
60333333321
60333333322
60333333323
60333333324
60333333325
60333333326
60333333327
60333333328
60333333329
60333333330
60333333331
60333333332
60333333333
60333333334
60333333335
60333333336
60333333337
60333333338
60333333339
603333333310
603333333311
603333333312
603333333313
603333333314
603333333315
603333333316
603333333317
603333333318
603333333319
603333333320
603333333321
603333333322
603333333323
603333333324
603333333325
603333333326
603333333327
603333333328
603333333329
603333333330
603333333331
603333333332
603333333333
603333333334
603333333335
603333333336
603333333337
603333333338
603333333339
6033333333310
6033333333311
6033333333312
6033333333313
6033333333314
6033333333315
6033333333316
6033333333317
6033333333318
6033333333319
6033333333320
6033333333321
6033333333322
6033333333323
6033333333324
6033333333325
6033333333326
6033333333327
6033333333328
6033333333329
6033333333330
6033333333331
6033333333332
6033333333333
6033333333334
6033333333335
6033333333336
6033333333337
6033333333338
6033333333339
60333333333310
60333333333311
60333333333312
60333333333313
60333333333314
60333333333315
60333333333316
60333333333317
60333333333318
60333333333319
60333333333320
60333333333321
60333333333322
60333333333323
60333333333324
60333333333325
60333333333326
60333333333327
60333333333328
60333333333329
60333333333330
60333333333331
60333333333332
60333333333333
60333333333334
60333333333335
60333333333336
60333333333337
60333333333338
60333333333339
603333333333310
603333333333311
603333333333312
603333333333313
603333333333314
603333333333315
603333333333316
603333333333317
603333333333318
603333333333319
603333333333320
603333333333321
603333333333322
603333333333323
603333333333324
603333333333325
603333333333326
603333333333327
603333333333328
603333333333329
603333333333330
603333333333331
603333333333332
603333333333333
603333333333334
603333333333335
603333333333336
603333333333337
603333333333338
603333333333339
6033333333333310
6033333333333311
6033333333333312
6033333333333313
6033333333333314
6033333333333315
6033333333333316
6033333333333317
6033333333333318
6033333333333319
6033333333333320
6033333333333321
6033333333333322
6033333333333323
6033333333333324
6033333333333325
6033333333333326
6033333333333327
6033333333333328
6033333333333329
6033333333333330
6033333333333331
6033333333333332
6033333333333333
6033333333333334
6033333333333335
6033333333333336
6033333333333337
6033333333333338
6033333333333339
60333333333333310
60333333333333311
60333333333333312
60333333333333313
60333333333333314
60333333333333315
60333333333333316
60333333333333317
60333333333333318
60333333333333319
60333333333333320
60333333333333321
60333333333333322
60333333333333323
60333333333333324
60333333333333325
60333333333333326
60333333333333327
60333333333333328
60333333333333329
60333333333333330
60333333333333331
60333333333333332
60333333333333333
60333333333333334
60333333333333335
60333333333333336
60333333333333337
60333333333333338
60333333333333339
603333333333333310
603333333333333311
603333333333333312
603333333333333313
603333333333333314
603333333333333315
603333333333333316
603333333333333317
603333333333333318
603333333333333319
603333333333333320
603333333333333321
603333333333333322
603333333333333323
603333333333333324
60333333

1	I. INTRODUCTION	1
2	II. BACKGROUND.....	2
3	A. NEITHER DEFENDANT JINHUI NOR DEFENDANT 4 DAZHENG HAVE DENIED THAT THEY COPIED AND 5 DISTRIBUTED PORTIONS OF PLAINTIFF'S SOFTWARE 6 PROGRAM WITHOUT A LICENSE.....	2
7	B. UNCONTROVERTED EVIDENCE SUPPORTED BY 8 DECLARATIONS SHOWS THAT UNLICENSED COPYING 9 OCCURRED AND THAT JINHUI AND DAZHENG 10 SPECIFICALLY TARGETED CYBERSITTER, A CALIFORNIA 11 COMPANY	3
12	C. THE DEFENDANTS HAVE NOT CONTESTED THE FAC 13 ALLEGATIONS THAT UNLICENSED COPYING OCCURRED 14 AND THAT JINHUI AND DAZHENG SPECIFICALLY 15 TARGETED CYBERSITTER, A CALIFORNIA COMPANY	4
16	D. PLAINTIFF REQUESTS JUDICIAL NOTICE THAT 17 CALIFORNIA IS KNOWN TO BE THE CENTER OF THE 18 UNITED STATES SOFTWARE INDUSTRY	5
19	III. LAW.....	5
20	A. PLAINTIFF NEED ONLY MAKE A PRIMA FACIE SHOWING 21 OF JURISDICTIONAL FACTS TO DEFEAT A MOTION TO 22 DISMISS FOR LACK OF PERSONAL JURISDICTION	5
23	B. PERSONAL JURISDICTION MAY BE ACHIEVED THROUGH 24 EITHER GENERAL OR SPECIFIC JURISDICTION	5
25	C. ALTERNATIVELY, PLAINTIFF HAS A RIGHT TO 26 JURISDICTONAL DISCOVERY	6
27	IV. ARGUMENT.....	6
28	A. DEFENDANTS JINHUI AND DAZHENG ARE SUBJECT TO 29 SPECIFIC JURISDICTION THROUGH THE CALDER 30 EFFECTS TEST.....	6
31	1. DEVELOPER DEFENDANTS PURPOSEFULLY	

1	DIRECTED THEIR ACTIONS TOWARDS CALIFORNIA	7
2	2. PLAINTIFF'S CLAIMS ARISE OUT OF DEVELOPER	
3	DEFENDANTS' FORUM RELATED ACTIVITIES	9
4	3. EXERCISE OF SPECIFIC JURISDICTION OVER	
5	DEVELOPER DEFENDANTS IS REASONABLE.....	9
6	V. CONCLUSION.....	10

I. INTRODUCTION

In their motions to dismiss for lack of personal jurisdiction, Defendants Zhengzhou Jinhui Computer System Engineering Ltd. (“Jinhui”) and Beijing Dazheng Human Language Technology Academy Ltd. (“Dazheng”), two Chinese software developers (collectively, the “Developer Defendants”), claim that this Court has no jurisdiction over them – despite the fact that there is uncontroverted evidence that they stole substantial elements from Plaintiff’s CYBERsitter software and Plaintiff is suing them in Plaintiff’s home forum – the Central District of California.

The Developer Defendants are Chinese companies that claim that they do not engage in any commercial or business activities in either the United States or the state of California. Declaration of Chen Xiaomeng (“Xiaomeng Decl.”) at ¶ 2; Declaration of Huiquin Zhao (“Zhao Decl.”) at ¶ 4. However, this Court should not be misdirected by the Developer Defendants’ sleight of hand. The Developer Defendants have focused their arguments on denying that this Court has general jurisdiction because even a casual review of the uncontested allegations and evidence demonstrates that this Court has specific jurisdiction over the Developer Defendants under the *Calder* effects test as interpreted under Ninth Circuit precedent. *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010).

Plaintiff CYBERSITTER LLC (“Plaintiff”), a California company, has both alleged and introduced evidence of the illegal and purposeful copying of its CYBERSITTER software program by the Developer Defendants. *See generally* Declaration of Dr. J Alex Halderman (“Halderman Decl.”) (Docket Inst. No. 62); First Declaration of Brian Milburn (“First Milburn Decl.”) at ¶¶ 8-9’ 24-30 (Docket Inst. No. 61). Specifically, Plaintiff has submitted the declaration of Brian Milburn, which states that he found CYBERSITTER’s code on Jinhui’s servers as of July 2009. Second Declaration of Brian Milburn (“Second Milburn Decl.”) at ¶ 3. Tellingly, though the Developer Defendants had executives submitting declarations supporting their

1 motions to dismiss, neither Jinhui nor Dazheng denied that Green Dam Youth Escort
2 incorporated Plaintiff's software program as alleged in the First Amended Complaint
3 ("FAC"), let alone introduced any evidence questioning Dr. Halderman's University
4 of Michigan report that demonstrates that Green Dam Youth Escort incorporates
5 significant portions of Plaintiff's software. *See generally*, Halderman Decl. (Docket
6 Inst. No. 62).

7 Indeed, the uncontested evidence shows that Defendants Jinhui and Dazheng
8 willfully targeted Plaintiff, a California company, through their tortious conduct of
9 unlicensed copying and distribution of Plaintiff's software program while knowing
10 that Plaintiff would suffer harm in California. Jinhui and Dazheng have purposefully
11 ignored Plaintiff's allegations and evidence of illegal copying because there are no
12 convincing arguments they can make: indeed, when the Developer Defendants'
13 infringing software contains instructions referring to the Plaintiff and instructing the
14 user to go to Plaintiff's website for software updates, any explanation that there was
15 not copying or of how such copying could have been "innocent" is just not credible.
16 Halderman Decl. (Docket Inst. No. 62) at ¶ 18.

17 Accordingly, because the Developer Defendants specifically and willfully
18 targeted Plaintiff, a California company, by infringing on its intellectual property, this
19 Court has specific jurisdiction over both Jinhui and Dazheng. *See Calder v. Jones*,
20 465 U.S. 783, 104 S. Ct. 1482 (1984); *see also Panavision Intern., L.P. v.*
21 *Toeppen*, 141 F.3d 1316 (9th Cir. 1998); *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*,
22 223 F.3d 1082 (9th Cir. 2000); *Rio Properties v. Rio Int'l Interlink*, 284 F.3d 1007 (9th
23 Cir. 2002); *Brayton Purcell, LLP*, 606 F.3d at 1128.

24 **II. BACKGROUND**

25 **A. NEITHER DEFENDANT JINHUI NOR DEFENDANT DAZHENG
26 HAVE DENIED THAT THEY COPIED AND DISTRIBUTED**

PORTIONS OF PLAINTIFF'S SOFTWARE PROGRAM WITHOUT A LICENSE

Defendants Jinhui and Dazheng have each submitted declarations supporting their motions to dismiss for lack of personal jurisdiction. Both declarations claim that neither Jinhui nor Dazheng conduct any business in the United States or California. Defendant Dazheng denies involvement in cyber attacks directed against Plaintiff as alleged in the FAC. Defendant Jinhui has not denied involvement in the alleged cyber attacks. Neither Defendant Jinhui nor Defendant Dazheng have denied that they copied and distributed portions of Plaintiff's software without Plaintiff's permission.

B. UNCONTROVERTED EVIDENCE SUPPORTED BY DECLARATIONS SHOWS THAT UNLICENSED COPYING OCCURRED AND THAT JINHUI AND DAZHENG SPECIFICALLY TARGETED CYBERSITTER, A CALIFORNIA COMPANY

The parties have introduced uncontroverted evidence that:

- Green Dam Youth Escort contains nearly 3000 lines of CYBERSitter's code (First Milburn Decl. at ¶¶ 24-30 (Docket Inst. No. 61; Halderman Decl. (Docket Inst. No. 62)).
- Defendants Jinhui and Dazheng created Green Dam Youth Escort (Declaration of Chen Xiaoming at ¶¶ 12-14);
- Brian Milburn, the owner and founder of CYBERSitter, found CYBERSitter code on Jinhui's servers on or about July of 2009 (Second Milburn Decl. at ¶ 3.);
- Plaintiff is the owner of CYBERSitter software, an internet content filter marketed to and used by parents to protect their children from adult content on the internet (First Milburn Decl. at ¶ 2.);
- Plaintiff resides and has its principal place of business in the Central District (First Milburn Decl. at ¶ 6.);

- 1 • Plaintiff's business equipment, including servers, is located in California
2 (*see id.*);
- 3 • California is known as being the center of the United States software
4 industry (Second Milburn Decl. at ¶ 4.);
- 5 • Plaintiff was damaged in California and in the Central District (*see*
6 *generally* First and Second Milburn Decl.); and
- 7 • In August 2009 when Plaintiff's counsel sent the Developer Defendants
8 cease and desist letters giving them notice of Plaintiff's claims (Fayer
9 Decl. at ¶¶ 2-4; Ex. 3 (August 14, 2009 Cease and Desist Letter to
10 Jinhui) and 4 (August 14, 2009 Cease and Desist Letter to Dazheng)).

11 **C. THE DEFENDANTS HAVE NOT CONTESTED THE FAC**
12 **ALLEGATIONS THAT UNLICENSED COPYING OCCURRED AND**
13 **THAT JINHUI AND DAZHENG SPECIFICALLY TARGETED**
14 **CYBERSITTER, A CALIFORNIA COMPANY**

15 Plaintiff has alleged, and the Developer Defendants have not contested, that:

- 16 • Defendants Jinhui and Dazheng copied and distributed elements of
17 Plaintiff's software. *See generally* First Amended Complaint ("FAC").
- 18 • Defendants Jinhui and Dazheng knew that Plaintiff was a United States
19 resident and would suffer harm in California. FAC at para. 62, 73.
- 20 • Defendants Jinhui and Dazheng knew that Plaintiff's software had been
21 infringed at least as early as June 2009. FAC at para. 54, 130.
- 22 • Jinhui and Dazheng continued to distribute the infringing Green Dam
23 software even after having knowledge of the infringement. FAC at para.
24 56, 61.

D. PLAINTIFF REQUESTS JUDICIAL NOTICE THAT CALIFORNIA IS KNOWN TO BE THE CENTER OF THE UNITED STATES SOFTWARE INDUSTRY

Plaintiff has also requested that the Court take judicial notice of the fact that California is widely known for being the center of the United States' software industry. RJN at ¶ 18; *see also* Second Milburn Decl. at ¶ 4.

III. LAW

A. PLAINTIFF NEED ONLY MAKE A PRIMA FACIE SHOWING OF JURISDICTIONAL FACTS TO DEFEAT A MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

“[I]n order to defeat [Defendants’] motions to dismiss for lack of personal jurisdiction, at this stage, Plaintiffs only needed to make, through their pleadings and affidavits, a *prima facie* showing of the jurisdictional facts. *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1071 (9th Cir. 2001). As the Ninth Circuit has held, “Although the plaintiff cannot simply rest on the bare allegations of its complaint, uncontested allegations in the complaint must be taken as true.” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002) (internal citations and quotations omitted). Moreover, “Conflicts between parties over statements contained in affidavits must be resolved in the plaintiff’s favor.” *Id.*

B. PERSONAL JURISDICTION MAY BE ACHIEVED THROUGH EITHER GENERAL OR SPECIFIC JURISDICTION

A Court may exercise personal jurisdiction through either general or specific jurisdiction. Plaintiff does not allege that this Court has general jurisdiction over the Developer Defendants. In order to have specific jurisdiction:

(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum,

1 thereby invoking the benefits and protections of its laws; (2) the claim
2 must be one which arises out of or results from the defendant's forum-
3 related activities; and (3) exercise of jurisdiction must be reasonable.

4 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010)
5 The first prong is satisfied by either “purposeful availment” or “purposeful
6 direction.” *Id.* As this case is a tort case, the appropriate analysis is “purposeful
7 direction” analyzed under the *Calder* effects test. *Id.* The Ninth Circuit has
8 interpreted the effects test to require a showing that: (1) intentional actions (2)
9 expressly aimed at the forum state (3) causing harm which the defendant knows is
10 likely to be suffered-in the forum state. *Id.* “There is no requirement that the
11 defendant have any physical contacts with the forum.” *Id.*

12 **C. ALTERNATIVELY, PLAINTIFF HAS A RIGHT TO JURISDICITONAL
13 DISCOVERY**

14 In the event that the Court fails to find pleadings and facts sufficient to support
15 a finding of personal jurisdiction, the plaintiff has a right to take jurisdictional
16 discovery where discovery may demonstrate facts sufficient to constitute a basis for
17 jurisdiction. *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d
18 1122, 1135 (9th Cir. 2003). In such situations, it is an abuse of discretion to deny the
19 plaintiff from taking jurisdictional discovery. *See id.*

20 **IV. ARGUMENT**

21 **A. DEFENDANTS JINHUI AND DAZHENG ARE SUBJECT TO SPECIFIC
22 JURISDICTION THROUGH THE CALDER EFFECTS TEST**

23 Defendant Developers' motions to dismiss for lack of personal jurisdiction
24 largely ignore Plaintiff's pled allegations and completely ignore the most important
25 uncontroverted facts and allegations with regard to specific jurisdiction – that there is
26 no genuine dispute that Plaintiff's software was actually copied and distributed by the
27 Developer Defendants. Plaintiff's owner found CYBERSITTER's code on Jinhui's

1 servers. Second Milburn Decl. at ¶ 3.

2 Beyond the allegations in the FAC, Plaintiff has introduced supporting
3 declarations of Dr. Halderman, and Brian Milburn, which clearly show that the
4 alleged copying did in fact occur, and the declaration of Greg Fayer which shows that
5 the Moving Defendants did in fact have knowledge of the IP theft and Plaintiff's
6 status of as a California company and the harm Developer Defendants were causing
7 no later than mid-August 2009. Halderman Decl. at ¶ 24 ("The only plausible
8 explanation is that [CYBERsitter's] filters were copied"); *see also generally* First
9 Milburn Decl.; Second Milburn Decl.; Fayer Decl. Dr. Halderman's technical
10 analysis of the copying has not been rebutted by these Developer Defendants, or any
11 defendants. Dr. Halderman's analysis shows that not only did Green Dam Youth
12 Escort copy CYBERsitter's code, but that such code is enabled in Green Dam Youth
13 Escort and that without the CYBERsitter code, Green am Youth Escort loses much of
14 its filtering effectiveness. Halderman Decl. at ¶¶ 25-37.

15 If the Developer Defendants had any evidence whatsoever that copying did not
16 occur, one would think they would introduce it here. Moreover, where the Defendant
17 and the Plaintiff have submitted conflicting affidavits, conflicts are resolved in the
18 Plaintiff's favor. *Dole Food Co.*, 303 F.3d at 1108.

19 **1. DEVELOPER DEFENDANTS PURPOSEFULLY DIRECTED
20 THEIR ACTIONS TOWARDS CALIFORNIA**

21 Solid Oak, Jinhui, and Dazheng all have one thing in common: they are
22 software developers who have sold web-filtering software in China. This case is
23 indistinguishable from *Brayton Purcell LLP*, 606 F.3d 1124 (9th Cir. 2010). In that
24 case, a defendant law firm targeted plaintiff's law firm in Northern California by
25 copying verbatim statements from plaintiff's website and using them on defendant's
26 website. This was done in an attempt to siphon off business from a competitor. See
27 *id.* Here, the facts are indistinguishable except that instead of law firms the parties are

1 software developers.

2 Jinhui claims “there are no allegations – let alone evidence – that Jinhui
3 targeted CYBERSitter in California.” Jinhui Motion at 12. This statement overlooks
4 at least two very important things: 1) In contrast to its claims, Jinhui maintained a
5 website that targeted Chinese speaking California residents by including a “San
6 Francisco” download channel where users could download Green Dam. DiPasquale
7 Decl. at ¶ 4. While Jinhui claims that this is a PRC website, the English translation
8 appears to show a copyright notice for Defendant Jinhui. *See id*; Ex. 1. 2) Jinhui has
9 ignored the evidence that was stored on in its servers – namely, the stolen
10 CYBERSitter code which proves that it targeted Solid Oak. Second Milburn Decl. at ¶
11 3.

12 Likewise, Dazheng similarly targeted Solid Oak. Dazheng admits that it co-
13 developed Green Dam Youth Escort program long with Jinhui.¹ *See generally*
14 Xiomang Decl. at ¶¶ 12-14. Plaintiff has introduced undisputed evidence that Green
15 Dam Youth Escort incorporates substantial portions of Plaintiff’s CYBERSitter code
16 without Plaintiff’s authorization. *See generally*, First Milburn Decl.; Halderman Decl.
17 The theft of software code is an intentional act; indeed, it is by definition specifically
18 targeted to the victim as it is impossible to steal software code without knowing whom
19 you are stealing it from. Defendants can therefore clearly be imputed with the
20 knowledge of knowing the location of Plaintiff. Moreover, Plaintiff sent both
21 Defendant Developers cease and desist letters on or about August 14, 2009. Fayer
22

23 ¹ On the one hand, Dazheng’s assertions in the Declaration of Chen Xiomeng that none of its
24 engineers are proficient in English may help to explain why the copying from the CYBERSitter
25 software was so blatant; it is possible that the infringers did not understand everything they were
26 copying. This would explain for example, why they left in the “smoking gun files” that instructed
27 users to return to Plaintiff’s website for updates. *See* Halderman Decl. at ¶ 18 (Docket Inst. No. 62).
28 On the other hand, Dazheng’s assertions are also not credible as an internet filter that targeted
pornography would need significant English language features in order to operate effectively which
would presumably require engineers who were proficient in English; a pornography filter that did
not recognize or filter the English language would not be very effective because most of the
pornography on the internet is English language based.

1 Decl. at ¶ 2-4; Ex. 3 (August 14, 2009 Cease and Desist Letter to Jinhui) and 4
2 (August 14, 2009 Cease and Desist Letter to Dazheng); *see generally* FAC. Dazheng
3 even acknowledged receipt of the cease and desist letter. Fayer Decl. at ¶4.

4 By stealing CYBERSITTER's code, Developer Defendants were expressly aiming
5 their conduct at California as California is Solid Oak's principal place of business and
6 the heart of the U.S. software industry. *See Panavision Int'l, L.P. v. Toeppen*, 938 F.
7 Supp. 616, 621-22 (C.D. Cal. 1996) aff'd, 141 F.3d 1316 (9th Cir. 1998) ("Toeppen
8 has harmed Panavision, the brunt of which Panavision has borne in California, which
9 Toeppen knew would likely happen because Panavision's principal place of business
10 and the heart of the theatrical motion picture and television camera and photographic
11 equipment business are in California.") (affirmed by Ninth Circuit); *see also* Second
12 Milburn Decl. at ¶ 4; Plaintiff's RJN at ¶ 18.

13 **2. PLAINTIFF'S CLAIMS ARISE OUT OF DEVELOPER
14 DEFENDANTS' FORUM RELATED ACTIVITIES**

15 Solid Oak's claims arise out of Developer Defendants' forum related activities
16 because their forum related activities consisted of copying and distributing Plaintiff's
17 CYBERSITTER's software. But for Developer Defendants' willful infringement of
18 Plaintiff's software, there would be no need for Plaintiff to bring this suit in
19 California.

20 **3. EXERCISE OF SPECIFIC JURISDICTION OVER DEVELOPER
21 DEFENDANTS IS REASONABLE**

22 The burden is on the defendant to demonstrate the unreasonableness of the
23 Court asserting jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d
24 1082, 1088 (9th Cir. 2000). The Defendant must put on a "compelling case" that
25 asserting jurisdiction would be unreasonable. *Id.* The Ninth Circuit considers:

26 (1) the extent of the defendant's purposeful interjection into the forum
27 state, (2) the burden on the defendant in defending in the forum, (3) the

1 extent of the conflict with the sovereignty of the defendant's state, (4) the
2 forum state's interest in adjudicating the dispute, (5) the most efficient
3 judicial resolution of the controversy, (6) the importance of the forum to
4 the plaintiff's interest in convenient and effective relief, and (7) the
5 existence of an alternative forum.

6 *Id.*

7 Here, the Developer Defendants purposefully interjected themselves into
8 California by stealing a California resident's intellectual property. The Developer
9 Defendants are able to mount a vigorous defense in California, as evidenced by their
10 choice of lead counsel – both AmLaw 100 firms. This lawsuit should not conflict
11 with the intellectual property laws of that the PRC has on the books and California has
12 a significant interest in adjudicating the dispute in order to protect the rights of a
13 California company. Finally, the current forum in California offers Plaintiff fast and
14 effective relief, particularly in compared to the alternative – which is to litigate in the
15 PRC which has already interjected itself in this lawsuit through extra-judicial means
16 and made it clear that Plaintiff could not receive a fair trial in the PRC. *See* Docket
17 Inst. No. 90 (Letter from PRC Expressing Disapproval of this Court's Jurisdiction).

18 Under these circumstances and under Ninth Circuit precedent, this Court has
19 specific jurisdiction over the Developer Defendants. Moreover, in the event the Court
20 is inclined to grant Developer Defendants' motions, it would be an abuse of discretion
21 to deny Plaintiff the right to take jurisdictional discovery because here such discovery
22 *may* demonstrate facts sufficient to constitute a basis for jurisdiction. *See Harris*
23 *Rutsky & Co. Ins. Services*, 328 F.3d 1122, 1135 (9th Cir. 2003).

24 **V. CONCLUSION**

25 Plaintiff respectfully requests that Haier's motion to dismiss based on a lack of
26 personal jurisdiction be denied. Alternatively, should the Court find that personal
27 jurisdiction is not supported by the pleadings or facts in evidence, Plaintiff

1 respectfully requests that it be allowed to take jurisdictional discovery on the
2 Developer Defendants.

3
4 Respectfully submitted,

5 DATED: June 27, 2011

6 FAYER GIPSON LLP

7 Gregory A. Fayer

8 Elliot B. Gipson

9 By: _____/s/

10 Elliot B. Gipson

11 Attorneys for Plaintiff

12 CYBERSITTER, LLC D/B/A

13 SOLID OAK SOFTWARE

14 FAYER GIPSON LLP
15 A LIMITED LIABILITY PARTNERSHIP
16
17
18
19
20
21
22
23
24
25
26
27
28